Bhanwar Lal vs. State of Rajasthan
(S.B.Criminal Revision No.1172/06)

Dated:- 19.1.2007.

HON'BLE MR.JUSTICE G.S.SARRAF

Mr. Rakesh Arora,for the petitioner.
Mr.S.N.Tiwari, Public Prosecutor.

The petitioner has preferred this revision petition u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Sections 397 and 401 Cr.P.C. against the order dated 24.11.2006 of Additional Chief Judicial Magistrate No.3,Jodhpur by which the application filed on behalf of the petitioner for declaring him juvenile has been dismissed.

Heard learned counsel for the petitioner and the learned Public Prosecutor.

Learned counsel for the petitioner submits that learned Additional Chief Judicial Magistrate has committed illegality by holding that the medical evidence will prevail over the other evidence including the school certificate. He submits that according to the certificate of the school the date of birth of the petitioner is 5.6.1988 and the date of occurrence is 25.3.2006 and as such the petitioner was juvenile on the date of occurrence and, therefore, the case should be transferred for trial to the Juvenile Justice Court,Jodhpur.

Learned Public Prosecutor submits that the learned Additional Chief Judicial Magistrate has not committed any illegality by placing reliance on medical evidence which is clear and umimpeachable and discarding the school certificate as it is not known who got the date of birth written in the admission form of the petitioner.

It appears that two witnesses have been examined on behalf of the petitioner namely Naresh Mishra-P.W. 3 and Bhanwar Lal-P.W. 4 while the State has examined Dr.P.C.Vyas-P.W. 1 and Dr.C.P.Swarnkar-P.W. 2.

Naresh Mishra-P.W. 3 says that copy of admission form of the petitioner is Ex.P-5A and that the column of date of birth is filled by the guardian and the teacher does not hold any enquiry as to whether the date of the birth of the person seeking admission is correct or not. Another witness examined by the petitioner is Bhanwar Lal-P.W. 4, who is the real brother of the petitioner. He states in his examination-in-chief that the petitioner was taken to the school for admission by his father who was alive at that time but, in cross-examination he states that the admission form Ex.P-5A is not in the hand-writing of his father as his father did not know 'Hindi' at all and he signed only in 'Sindhi'. It is thus clear that the date of birth in the application form Ex.P-5A has not been written by the father or any guardian of the petitioner. It is not known who filled up the

admission form Ex.P-5A and who wrote 5.6.1988 as the date of birth of the petitioner. It is thus clear that there is no basis of the date of birth as recorded in the school certificate. We do not get any help from the statement of Bhanwar Lal also because he says that he himself personally does not know the correct date of birth of the petitioner. It is thus not possible to form a view regarding the correct age of the petitioner on the basis of evidence led by him.

The prosecution has examined Dr.P.C. Vyas and Dr.C.P.Swarnkar. Dr. Swarnkar says that according to the x-ray of the petitioner, fusion had taken place of the bones of elbow, wrist and pelvis. He further states that fusion is less probable before the age of 18 years. Dr.P.C. Vyas is the member of the medical board constituted to give opinion regarding the age of the petitioner. He says that the petitioner had 32 teeth including 4 wisdom teeth which appear between the age of 17 to 25. Dr. Vyas says that after clinical examination and x-ray he found the petitioner to be more than 20 years old.

In this case the medical evidence is clear and emphatic. Thre is no ground to dis-believe or to doubt its veracity. On the other hand, the age mentioned in the school certificate cannot be accepted to be true because there is no basis of the date of birth as recorded in the school certificate. I am of the opinion that on the basis of the evidence available on the record it is not established that the

petitioner was less than 18 years of age on the date of occurrence.

There is thus no ground to interefere with the order of the learned Additional Chief Judicial Magistrate,Jodhpur.

Consequently, this revision petition stands dismissed.

(G.S.SARRAF),J.